

1 PILLSBURY WINTHROP LLP  
 2 GLENN J. BORROMEIO # 153862  
 3 SARAH K. CHANG #164581  
 4 50 Fremont Street  
 5 Post Office Box 7880  
 6 San Francisco, CA 94120-7880  
 7 Telephone: (415) 983-1000  
 8 Facsimile: (415) 983-1200  
 9  
 10 Attorneys for Defendant  
 11 MOBEX COMMUNICATIONS, INC.

7 UNITED STATES DISTRICT COURT  
 8  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10  
 11 SAN FRANCISCO DIVISION

11 WILLARD J. GREENE, MICHAEL  
 12 SARINA and GARRISON MACRI,  
 13  
 14 Plaintiffs,

14 vs.

15 MOBEX COMMUNICATIONS, INC., and  
 16 Does 1-50,  
 17  
 18 Defendants.

Case No. C01-3592 CRB

DECLARATION OF JOHN REARDON  
 IN SUPPORT OF DEFENDANT  
 MOBEX COMMUNICATIONS, INC.'S  
 OPPOSITION TO PLAINTIFFS'  
 MOTION FOR WRIT OF  
 ATTACHMENT ON MOBEX  
 COMMUNICATIONS, INC.

Judge: The Honorable Charles R. Breyer  
 Dept: 8 (Eight)

Complaint Filed: September 21, 2001  
 Trial Date: Not Yet Assigned

19 The undersigned, John Reardon, declares the following:

20 1. I am an employee and the chief executive officer of Mobex  
 21 Communications, Inc., the defendant in the above-referenced case ("Defendant") and have  
 22 personal knowledge of the facts and matters set forth in this declaration. They are true and  
 23 correct and if called upon to testify regarding the facts, I could and would competently do  
 24 so.

25 2. From January 1, 2001, to the present date, I have served as the chief  
 26 executive officer of the Defendant.

27 3. I am currently a member of the Board of Directors of the Defendant.  
 28

1 4. The Defendant is a Delaware corporation which is a telecommunication  
2 services company.

3 5. Except as stated below with respect to the Defendant's transmission towers,  
4 there are no current resolutions of the Board of Directors of the Defendant to dissolve, sell  
5 and liquidate the general assets or businesses of the Defendant except in the normal  
6 operation of the on-going businesses of the Defendant or to liquidate the assets of the  
7 Defendant or to dissolve the Defendant. It is the current intention of the Defendant to  
8 continue to operate as a going concern and to grow the businesses of the Defendant either in  
9 its current form or with the increased participation of Nextel Communications in the future.  
10 However, no specific agreement exists with Nextel Communications at this point in time to  
11 do so, either through its current investment vehicle or a new vehicle.

12 6. The Defendant has undertaken and engaged a broker, Baker & Associates, to  
13 sell seventy-seven (77) transmission towers that it owns which are not integral to the  
14 Defendant's on-going business. In or about August 2000, the Defendant received four  
15 offers from third parties for the seventy-seven (77) towers in a range of approximately \$19  
16 million to \$21 million. There are currently no liens on the towers. The Defendant has  
17 intended to use the sales proceeds of the towers to pay off some of its debt including bonus  
18 amounts owed to the plaintiffs in this case.

19 7. Based on third-party purchase offers for the assets of the Defendant  
20 (including the above towers) and investments in the businesses of the Defendant by  
21 investors and business partners of the Defendant in the current year, I have reasonably  
22 estimated the fair market value of the Defendant's assets to be approximately \$100,000,000  
23 and certainly in excess of \$50,000,000.

24 8. The Defendant currently has average revenue this year of approximately  
25 \$1,200,000 per month from its businesses and, except for the severance payment  
26 obligations to its former employees including plaintiffs Michael Sarina and Garrison Macri  
27 would be operating at a cash-flow breakeven point. The obligation to make the severance  
28 payments will cease in or before January 2002.

\$14.4 million a year rate near end of 2001, with statement to continue and expand into future, thus same or more in 2002+, per this statement.

He estimates much higher later, unless here he means net assets.

But for MCLM Affiliate attributable revenue purposes, it is the gross revenues that are counted directly.

PILLSBURY WINTHROP LLP  
GLENN J. BORROMEIO # 153862  
SARAH K. CHANG #164581  
50 Fremont Street  
Post Office Box 7880  
San Francisco, CA 94120-7880  
Telephone: (415) 983-1000  
Facsimile: (415) 983-1200  
  
Attorneys for Defendant  
MOBEX COMMUNICATIONS, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WILLARD J. GREENE, MICHAEL  
SARINA and GARRISON MACRI,  
  
Plaintiffs,  
  
vs.  
  
MOBEX COMMUNICATIONS, INC., and  
Does 1-50,  
  
Defendants.

Case No. C01-3592 CRB

DECLARATION OF JOHN REARDON  
IN SUPPORT OF DEFENDANT MOBEX  
COMMUNICATIONS, INC.'S REPLY TO  
PLAINTIFFS OPPOSITION AND IN  
OPPOSITION TO PLAINTIFFS' CROSS  
MOTION FOR SUMMARY  
ADJUDICATION

Date: February 22, 2002  
Time: 10:00 a.m.  
Courtroom: 8, 19<sup>th</sup> Floor

Complaint Filed: September 21, 2001  
Trial Date: March 18, 2002

I, JOHN REARDON, declare as follows:

1. Since January 1, 2001, I have served as President and CEO of Mobex Communications, Inc., the defendant in the above-referenced case ("Mobex" or "Defendant"). Prior to that, I served as General Counsel and Vice President of Human Resources for the period October 1997 through December 31, 2000. As such, have personal knowledge of the facts and matters set forth in this declaration. If called upon to testify regarding the following facts, I could and would competently do so.

2. In their Declarations attached to Plaintiffs' Memorandum of Points and



Lack of delivery of licenses: the reason why is explained by Mr. Reardon below: Nextel did not accept some as timely constructed: that is possibly ONLY SINCE Mobex defrauded the FCC and reported the licenses as timely constructed, then let Nextel find the ones that were not (not well enough covered, even if not timely constructed, this sort of "business" suggests.

This is relevant to this Petition for Forbearance. Mr. Reardon is CEO of MCLM to this day, despite occasional suggestions by Sandra Depriest that while he negotiate and signed all 3rd party contracts, that is not as an officer (that IS the definition of an officer).

The relevance is clear: MCLM continues its acquired company Mobex's practices in Site-based licensing that commenced in with Mobex in non-AMTS, which it sold to Nextel, as it got into AMTS: the pattern is the same up to the violation of §80.385(b)(1) and the Two §80.385(b)(1) Orders to enable unlawfully MCLM-Mobex to sell off AMTS, and try to launder the unlawful actions and license defects..

1 Authorities in Opposition to Defendant Mobex Communications, Inc.'s Motion for  
2 Summary Adjudication and in Support of Plaintiffs' Cross Motion for Summary  
3 Adjudication, Plaintiffs Greene, Macri and Sarina make several statements, which are not  
4 accurate.

5 3. Plaintiff Sarina, our former CFO, misleadingly states in Paragraph 8 that the  
6 total proceeds of asset sales during the covered period (June 2000 through June 30, 2001)  
7 were \$120,997,000). This is simply not correct. In fact, Mobex received less than \$100  
8 Million as a result of the Nextel Asset Purchase Agreement, with the remainder of the  
9 original \$105 Million purchase price either not paid by Nextel due to lack of delivery of  
10 licenses, or paid directly to third parties, including broker's, HBS LLC and Idagon LLC.  
11 Of the asset sale proceeds received by Mobex, one third party, known as ParWatt, Inc., was  
12 entitled to 20% of the proceeds of the South Carolina license sale. Mobex has paid ParWatt  
13 just over \$1.3 Million, of which \$329,000 was paid in cash and a Note for \$975,000 issued  
14 for the balance. Thus, Mr. Sarina's net sales proceeds calculation fails to fully account for  
15 several payments which reduce Mobex's net sales proceeds.

16 4. Moreover, Mr. Sarina informed both me and Mobex's Board in April 2001  
17 that the intercompany transfer of towers for \$5.7 Million would not be included as a  
18 covered transaction under the Participation Plan because it involved no third party  
19 transaction and no negotiation: at the end of the day, Mobex simply moved 50 towers from  
20 one controlled subsidiary to another, and moved \$5.7 Million (the book value of the towers)  
21 from one controlled subsidiary to another. Mobex has, in fact, retained a broker to sell  
22 these 50 towers to a third party during the year 2002, but has yet to do so. The proceeds of  
23 such a future sale will be outside the covered transaction period. Yet, Plaintiff Sarina  
24 would have the Court treat this as sales proceeds, despite the fact that the Company did not  
25 receive any more funds than it already held in its control. Even if the Court agrees with his  
26 contention that it should be a covered transaction, the most the transaction should be  
27 counted for is 15% of the \$5.7 Million transfer, which signifies the 15% ownership position  
28 of Nextel in the AMTS subsidiary known as Mobex Network Services Company.

C:\TEMP\Declaration of John Reardon in Support of Reply for SJM DOC 2

DECLARATION OF JOHN REARDON IN SUPPORT OF DEFENDANT MOBEX COMMUNICATIONS, INC.'S REPLY TO PLAINTIFFS' OPPOSITION AND IN OPPOSITION TO PLAINTIFFS' CROSS MOTION FOR SUMMARY ADJUDICATION (Case No. 01-3592 CRB)

Nextel may be an affiliate of MCLM in the Auction-61 relevant years: E.g., Mobex "merged into MCLM" as MCLM told the US District Court in NJ, in Skybridge v. PSI and MCLM- Mobex.

1 14. In paragraph 12, Mr. Sarina claims Mobex sold more than 1/2 of the assets.  
2 This is not true. When Plaintiffs signed the employment agreements in June 2000, Mobex  
3 owned towers, AMTS licenses and its MMSC business, all of which Mobex still owns  
4 today. I have estimated that Mobex's portion of the AMTS licenses is worth over \$160  
5 Million. The MMSC business is worth \$12.5 Million, based upon the latest audited  
6 numbers, and we have tower offers for our 78 towers which range between \$19 and \$22  
7 Million. Thus, we may have sold around \$110 Million worth of assets since June 2000, but  
8 that is certainly much less than what we continue to own in the AMTS licenses, MMSC  
9 business and towers. ✓

Why sell towers if  
Mobex is  
continuing with  
AMTS?

10 15. Even if Mr. Sarina is correct, we did not sell half the assets while he and the  
11 other Plaintiffs were employed. There is no open ended commitment by the company that  
12 if it sells more than half the assets, the Plaintiffs are entitled to additional severance. Thus,  
13 if we sold our company tomorrow, we would not be obligated to pay them for change of  
14 control provisions any more than we are obligated for a sale which happened in May 2001.  
15 Thus, even if Mr. Sarina's calculations were correct of the value of our remaining assets, it  
16 is not relevant because none of the Plaintiffs were employees on May 1, 2001, when Nextel  
17 agreed to a partial closing of the Asset Purchase Agreement. Unless and until a closing  
18 occurs, no property has been conveyed. ✓

Partial closing  
with Nextel in  
May 2001.

19 16. In paragraph 15, Mr. Sarina again misstates the facts when he claims "at no  
20 time did Mobex propose a consulting contract." Quite to the contrary, Mobex has provided  
21 to the Court its April 2001 letter to Mr. Sarina proposing a consulting agreement. Mr.  
22 Sarina portrayed himself to third parties as our consultant, and billed and received payment  
23 for such services at the agreed-upon rate during the three months following termination of  
24 his employment relationship with the Company.

25 17. In paragraph 18, Mr. Sarina claims I asked him to calculate a Retained  
26 Proceeds Bonus, when in fact I asked him to calculate the net sales proceeds, which is used  
27 under either formula. His claim is directly contradicted by paragraph 19 of his declaration  
28 in the Declaration of Michael Sarina in Support of Plaintiffs' Writ of Attachment filed in



1 the form of debt issued by buyers and third party debt payments assumed by buyers, Mobex  
 2 will likely not make a distribution until those debts are discharged in full by the Buyers. In  
 3 addition, indemnification provisions exist in the various purchase agreements which could  
 4 require Mobex to return significant amounts of sales proceeds. For example, if Nextel  
 5 determines that Mobex incorrectly delivered a license, or a license was not constructed in  
 6 time, etc. then Nextel could demand repayment of that portion of its purchase price. Thus,  
 7 it is premature at best for Mr. Sarina in paragraph 28 to state that Mobex has received and  
 8 retained its sales proceeds with any finality.

9 25. In paragraph 30, Mr. Sarina places importance on the assets held by Mobex  
 10 in February 2000. This date is irrelevant, since Mobex and Plaintiffs entered into the  
 11 employment agreements in June 2000, not February 2000. The assets acquired by Mobex  
 12 in April and May of 2000 consisted of the many AMTS licenses and towers which Mobex  
 13 still retains today. Thus, Mr. Sarina is incorrect in his assertion that Mobex has sold half of  
 14 its assets. The relevant time period is June 2000 through June 30, 2001. Mobex retains  
 15 more than half the assets it held in June 2000.

16 26. In Paragraphs 35 and 37, Mr. Sarina seems to indicate the value of our  
 17 AMTS licenses is \$15-\$20 Million. He attaches a confidential document prepared by a  
 18 third party and apparently obtained by him surreptitiously. By disclosing proprietary  
 19 information which the Company is bound by non-disclosure terms to protect, Mr. Sarina  
 20 has violated the confidentiality provisions contained in his own employment agreement. In  
 21 addition, Mr. Sarina relies upon a summary by a consultant, which summary was and never  
 22 has been agreed with by Mobex or others. In fact, any would-be buyer knows that in an  
 23 effort to obtain a low price for assets, the first offer is always far below reasonable values.  
 24 When we sold the 800/900 MHz licenses to Nextel, we negotiated a total purchase price in  
 25 the contract of \$105 Million. Yet a third party consultant estimated the value at between  
 26 \$30 and \$35 Million. In fact, Nextel's first offers were close to this range \$35 Million  
 27 range. So, negotiations and initial offers are of limited relevance to the true value of the  
 28 assets.

This is an effective admission that Mobex could not make representations to Nextel in the sale contract that the site-based SMR licenses it was selling were timely and properly constructed!

Otherwise, the statement here would be that Mobex is sure it can defend any incorrect indemnification claim on this subject that Nextel may raise.

This is an unlawful game played by Mobex with the FCC and the buyer, who either pretends to overlook defects as to lack of actual and timely construction, if there is a good-enough pretense concocted and spuriously documented, or be law-abiding but left with no license to acquire.

That is what Mobex via MCLM (they merged and Mr. Reardon (who is the CEO of both) did with site-based SMR and are continuing with Site-Based AMTS, including by enhance their sale opportunities by violating §80.385(b)(1) and the Two §80.385(b)(1) Orders.

RICHARD T. BOWLES (State Bar No. 46234)  
WILLIAM T. NAGLE (State Bar No. 180162)  
BRADLEY R. BOWLES (State Bar No. 202722)  
BOWLES & VERNA LLP  
2121 N. California Boulevard, Suite 875  
Walnut Creek, California 94596  
Telephone: (925) 935-3300  
Facsimile: (925) 935-0371

Attorneys for Plaintiffs Willard J. Greene,  
Michael Sarina, and Garrison Macri

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

WILLARD J. GREENE, MICHAEL SARINA,  
AND GARRISON MACRI,

Plaintiffs,

v.

MOBEX COMMUNICATIONS, INC. AND  
DOES 1-50

Defendants.

No. C01-3592 CRB

**PLAINTIFFS' ADDENDUM OF  
EVIDENCE DISCOVERED ON  
FEBRUARY 14, 2002 AT THE  
DEPOSITION OF MICHAEL MONIER,  
CHAIRMAN OF MOBEX  
COMMUNICATIONS, INC., FILED IN  
SUPPORT OF OPPOSITION TO  
MOBEX'S MOTION FOR SUMMARY  
ADJUDICATION AND IN SUPPORT OF  
PLAINTIFFS' CROSS-MOTION FOR  
SUMMARY ADJUDICATION**

Date: February 22, 2002

Time: 10:00 a.m.

Courtroom: 8, 19<sup>th</sup> Floor

Judge: The Honorable Charles R. Breyer

Complaint Filed: September 12, 2001

Trial Date: March 18, 2002

On February 14, 2002, the first deposition in the action took place when plaintiffs deposed Michael Monier, Chairman of Mobex Communications, Inc. ("Mobex"). (Declaration of William T. Nagle in support of Addendum, ¶2). At Mr. Monier's deposition, he testified that there were no net sales proceeds distributed to Mobex shareholders as there were no net sales proceeds available for distribution. (Nagle Decl., at ¶3.) This evidence further supports plaintiffs' position that only the Retained Proceeds Bonus ("RPB") plan under plaintiffs' employment agreements applies because RPB is defined under the employment agreements as an: "Asset Sale Where Portion or All of Net Sale Proceeds Are Retained by Company." Further, Mr. Monier's testimony on February 14, 2002 established that Mobex is not following the terms of the contract because Mr. Monier stated that Mobex had the discretion to determine what bonus plan applied even if there was no money to distribute or even if Mobex retained the net sales proceeds. (Nagle Decl., at ¶6.)

This addendum is filed because the foregoing evidence was discovered after plaintiffs' opposition due date of February 8, 2002. (Nagle Decl., at ¶4.) Otherwise, plaintiffs would have included this evidence in their opposition and in support of their cross-motion. (Nagle Decl., at ¶5).

DATED: February \_\_\_\_, 2002

Respectfully submitted,

BOWLES & VERNA

By: \_\_\_\_\_

William T. Nagle  
Attorneys for Plaintiffs Willard Greene,  
Michael Sarina and Garrison Macri

See preceding pages in this Attachment based on Greene v. Mobex: Mr. Reardon stated in late 2001 that Mobex had monthly revenues of \$1.2 million on average and was planning to continue and grow, mainly based on its then main asset, its Site-Based AMTS stations that Mr. Reardon as the Mobex CEO valued at "over \$160 Million."

Here, on this page, the Mobex Chairman states, in 2002, that the company has not and made any distributions (major distributions could decrease gross revenues by depleting capital otherwise retained for growing the company, and Mr. Reardon said in late 2001, below, would take place.

The relevance to this Petition for Forbearance includes the following: This

shows unlawful anti-competitive action by MCLM (including Mobex that merged into it) against Petitioners in Auction 61, by MCLM not disclosing and attributing the substantial (shown herein) 2002 and later-year gross revenues of Mobex that, if attributed, would disqualify MCLM in Auction 61 both from its certified bidding discount level, and fully from the auction due to false certifications and change in bidder discount level or "size."

Mobex-MCLM conspired to hide this disqualification from the FCC and Petitioners in and after Auction 61, and (as the Petition explains in other parts) further maintained many terminated Site-Based AMTS licenses before and during said auction, to depress the ability of Petitioners to raise and risk spending capital to bid in the auction. Mobex-MCLM then, continuing this unlawful anti-competitive signature mode of dealing, repeatedly violated §80.385(b)(1) and the Two §80.385(b)(1) Orders.